

EXHIBIT 2

1
2 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

3 Case No. 17-BK-3283-LTS

-----x

4 In re:

5 THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

6 as representative of

7 THE COMMONWEALTH OF PUERTO RICO, et al.,

8 Debtors.

9 -----x

Case No. 17-BK-4780-LTS

10 -----x

In re:

11 THE FINANCIAL OVERSIGHT AND MANAGEMENT
12 BOARD FOR PUERTO RICO,

13 as representative of

14 THE PUERTO RICO ELECTRIC POWER AUTHORITY,

15 Debtor.

-----x

16 May 16, 2023

9:31 a.m.

17
18 VIDEOTAPED DEPOSITION of DAVID
19 BROWNSTEIN, held at the offices of Kramer
20 Levin Naftalis & Frankel LLP, located at 1177
21 Avenue of the Americas, New York, New York
22 10036, before Anthony Giarro, a Registered
23 Professional Reporter, a Certified Realtime
24 Reporter and a Notary Public of the State of
25 New York.

1 DAVID BROWNSTEIN

2 Q How long prior to execution
3 of the agreement that's Exhibit 91 did
4 those negotiations begin?

5 A I don't recall.

6 Q Do you know if it was days
7 or weeks or months?

8 A It was either weeks or
9 months.

10 Q Could it have been less than
11 a month?

12 MR. MERVIS: Objection to
13 the form.

14 MS. SPILLANE: Objection.

15 A I don't recall.

16 Q This is, I think, a yes, no
17 or I don't know question.

18 Was the mediation team
19 involved in negotiations leading to the
20 fuel line lenders' PSA?

21 MR. MERVIS: Yeah. I don't
22 see how that doesn't -- I'm going to
23 instruct him not to answer that
24 question.

25 Q Did you discuss negotiations

1 DAVID BROWNSTEIN

2 you --

3 Q Let me try it a different
4 way. I don't want you to answer a
5 question you don't understand.

6 What information, if any,
7 did you provide to board members
8 concerning proposals to the fuel line
9 lenders?

10 A All proposals to and from
11 the fuel line lenders were reviewed and
12 approved by the board.

13 Q How many rounds of
14 back-and-forth proposals and
15 counterproposals were there?

16 MR. MERVIS: I think I have
17 to instruct the witness not to answer
18 that question on the basis of
19 mediation confidentiality.

20 Q You plan to testify at the
21 confirmation hearing, do you not, that
22 the fuel line lenders' settlement is
23 reasonable; correct?

24 A Yes.

25 Q So I'm just trying to get at

1 DAVID BROWNSTEIN
2 the process of negotiating that agreement
3 as between the oversight board and the
4 fuel line lenders.

5 And so counsel's instructed
6 you not to answer a few questions
7 already. There may be more such
8 instructions. I just want to make clear
9 that you won't plan to testify at the
10 confirmation hearing as to information
11 concerning the negotiations that you're
12 being instructed not to testify to today.

13 MR. MERVIS: I don't know
14 that it's for him to say. But I
15 think that depending on what the
16 questions are -- let me put it this
17 way. I think that the instructions
18 would certainly provide opponents of
19 the plan with a basis to make
20 arguments about not being allowed to
21 take discovery on certain things,
22 hard to deal with it in a vacuum.
23 But you asked him a particular
24 question about the involvement of the
25 mediators which I think that squarely

1 DAVID BROWNSTEIN

2 puts the mediators into the mix,
3 which is not, I don't think -- we
4 won't do that. And you asked the
5 question about how many proposals
6 went back and forth. And I think
7 that that process is -- that process
8 does get into mediation privilege. I
9 realize that some of these are
10 judgment calls. And people can
11 disagree. But that's where I'm
12 landing.

13 MR. MADDEN: Maybe to cut to
14 the chase, if I were to ask
15 additional questions about the
16 process as between the oversight
17 board and the fuel line lenders and
18 mediation that led to the agreement
19 to the fuel line lenders' PSA, is it
20 fair to say you'll instruct the
21 witness not to answer those process
22 questions?

23 MR. MERVIS: Probably. But
24 I can think, for example, of a -- and
25 I don't mean to play -- so, for

1 DAVID BROWNSTEIN

2 example, you know, who was this
3 negotiation counterpart, I think
4 that's fair. But there's a place.
5 There's a line; right? It's not
6 necessarily a bright line. One
7 bright line, I will say, in terms of
8 what went back and forth, yeah, that,
9 I'm going to instruct not to answer.

10 Q You've already told me who
11 your counterparts are. So I'll move on.

12 Mr. Brownstein, what
13 benefits, if any, does the fuel line
14 lenders' PSA provide to PREPA?

15 MR. MERVIS: Just note my
16 objection to the form. But you can
17 answer.

18 A As I said previously,
19 without that, without knowing what amount
20 we were going to be paying them and
21 whether, in fact, they were -- which
22 means whether they were entitled to
23 priority, we wouldn't have been able to
24 make an offer to the bondholders that
25 took the wallet we have available and put

1 DAVID BROWNSTEIN

2 it on the table which is what our goal
3 was.

4 Q Any other benefits to PREPA
5 from the fuel line lenders' PSA?

6 MR. MERVIS: Same objection.

7 A I mean it's a settlement.
8 Every settlement's got the benefit of
9 eliminating litigation and moving on to
10 what PREPA's job is, which is, you know,
11 either a loan or with the operating
12 entities like LUMA and Genera, focusing
13 on what their job is supposed to be which
14 is to create a resilient system that's
15 sustainable for the public in Puerto
16 Rico.

17 Q Any other benefits?

18 MR. MERVIS: Same objection.

19 Matt, I don't think you're going to
20 mind this. The reason I'm objecting
21 is that, as you mentioned, he was a
22 30(b)(6) designee. And I'm not sure
23 from your questioning whether we're
24 doing 30(b)(6) or his personal
25 knowledge. So that's the basis for

1 DAVID BROWNSTEIN

2 my objections to this.

3 MR. MADDEN: These questions
4 would go to both. So he's both been
5 designated as a 30(b)(6) witness on
6 the subject to the fuel line lenders'
7 PSA. He's also been identified by
8 the board's disclosures as someone
9 who expects to testify at the
10 confirmation hearing regarding the
11 benefits of the PSA.

12 MR. MERVIS: That's helpful.
13 Got it.

14 Q So if you need me to
15 distinguish between the two capacities,
16 please let me know. But for the purposes
17 of this question, I'm just trying to
18 exhaust your knowledge as to the benefits
19 of PREPA from the fuel line lenders' PSA.

20 So the question on the table
21 was, other than what you've just
22 identified, are there any other benefits?

23 A The benefit I would suggest
24 to you of each settlement that we have
25 is, A, they stopped our litigation

1 DAVID BROWNSTEIN

2 fighting with each of them. But the
3 other benefit is it proves out from my
4 perspective that because we have them,
5 that's not why we did them, but that what
6 we are offering, we have sophisticated
7 institutional investors who have agreed
8 to a structure that we believe provides
9 the value that it provides, meaning we're
10 giving you a bond that at 6 percent is
11 worth par; right?

12 And National concurs with
13 that, otherwise they would have not
14 accepted it in its form. So everybody
15 cares about the same things from COFINA
16 to the Commonwealth. We care about those
17 same things at the board, making sure
18 we're trying to create the most valuable
19 instrument for the bondholders.

20 And I believe that the
21 markets have borne out that we did what
22 we said we would do in creating a strong
23 marketable instrument that provides the
24 value we said it provided at Citi on
25 behalf of the board.

1 DAVID BROWNSTEIN

2 A Our job stood the same job
3 we did there for the benefit of the
4 holders. And I think we have proved out
5 we have the best interest of everyone
6 which is what the board cares about in
7 making sure we aren't creating a problem
8 bond that doesn't have market access at
9 the rates we set.

10 Q What are the risks to PREPA
11 if it were to lose the priority
12 litigation?

13 MS. SPILLANE: Objection to
14 form.

15 MR. MERVIS: Same.

16 A Well, as I've said, if we
17 didn't have a settlement with them, we
18 couldn't settle with the bondholders
19 because we didn't know how much we had
20 available to pay the bondholders. So the
21 risk is we'd be in litigation for a very
22 long time.

23 Q Any other risks to PREPA if
24 it were to lose the priority litigation?

25 Let's take that back.

1 DAVID BROWNSTEIN

2 what's in the indenture to be filed
3 tomorrow, is that you can't answer those
4 questions because it's not final?

5 MR. MERVIS: Object to the
6 form.

7 A I can't answer because I
8 don't -- I can't answer because I don't
9 know; right? To this moment, I don't
10 know what changes are being made or not.
11 I know what discussions we've had on
12 things that could change. But I don't
13 know whether they will be changed or not.

14 MR. MADDEN: And if I were
15 to ask the witness about discussions
16 about things that could change to the
17 indenture, am I correct that you
18 would instruct the witness not to
19 answer those questions, counsel?

20 MR. MERVIS: Yes.

21 Q If you turn to page 28 of 32
22 of the PDF, it's the last page of the
23 term sheet, what are the consummation
24 costs covered here?

25 A Well, one set of costs that

1 DAVID BROWNSTEIN

2 we are paying, which isn't the
3 consummation cost, but it helps you
4 define it a little bit, is the
5 reimbursement for professional expenses
6 which does not include any costs for
7 litigation.

8 As you probably know, we
9 don't pay someone to litigate with us or
10 against us, I should say. So that's one
11 piece of this. And the consummation
12 costs are simply for their participation
13 in negotiating a settlement which is
14 consistent with what we've done in other
15 cases.

16 Q Focusing first on the
17 professional fee reimbursement, this
18 refers to documented professional fees.

19 What does that mean?

20 A They need to show us that
21 they're real fees.

22 Q And why is that?

23 A Because if they just tell us
24 they spent \$11 million, what do we have
25 to back that up? We're a governmental

1 DAVID BROWNSTEIN

2 entity -- right? -- PREPA, who's paying
3 these bills. You don't pay someone's
4 bill without the backup. And that's been
5 the case historically as well.

6 Q When you say the
7 consummation costs are simply for their
8 participation in negotiating a
9 settlement, what do you mean by that?

10 A Well, they, as you know from
11 our discussions today, have been involved
12 since then in working with us as an
13 example on the indenture, trying to make
14 sure that everything we are doing creates
15 the value that people are going to
16 expect. And that is taking a lot of
17 their time.

18 So as a party to the plan,
19 they are in a position to help us in
20 structuring issues and the like to make
21 sure we come up with the right
22 transaction for all involved.

23 Q Will the fuel line lenders'
24 professional fees associated with
25 assisting with the indenture be

1 DAVID BROWNSTEIN

2 reimbursable under the first category of
3 costs we discussed?

4 MR. MERVIS: Objection to
5 the form.

6 A I believe that estimated in
7 their -- I don't know the answer. I
8 believe that it's possible that estimated
9 in their 11 million was some portion of
10 the fees, probably not for the indenture,
11 but for legal work in supporting us
12 through the plan.

13 Q And then at the bottom of
14 the term sheet here, there's a category
15 for release. You see that?

16 A Uh-huh.

17 Q What is the purpose of
18 including this lease in the agreement?

19 A Well, releasing each other
20 or others?

21 Q Fair point. Let me try
22 again.

23 What benefit does the
24 oversight board gain from releasing the
25 fuel line lenders under this agreement?

1 DAVID BROWNSTEIN

2 Q And what was the nature of
3 your involvement in that process?

4 A I worked with the board and
5 Proskauer to negotiate the agreement we
6 have with National and the document that
7 we executed with them.

8 Q And with whom did you
9 principally interact on the National
10 side?

11 A I guess I would have to say
12 Trish would have been my primary contact.

13 Q And what's Trish's full
14 name, if you know? If you don't recall
15 right now, that's okay.

16 A She just retired. So I'm
17 trying to forget her. I didn't really
18 mean that second part. But I can't tell
19 you why -- hold on.

20 Q We'll come back to it.

21 A No, no, no. I have to find
22 it, or I'll kill myself. Ferrari.

23 Q When did negotiations toward
24 the National PSA began?

25 A During mediation.

1 DAVID BROWNSTEIN

2 Q Early in mediation, middle
3 in mediation, toward the end?

4 A Early to in the middle.

5 Q Sorry?

6 A Early to in the middle is
7 the best I can do for you.

8 Q And was the mediation team
9 involved in those negotiations?

10 MR. MERVIS: That one, I'm
11 going to instruct the witness not to
12 answer that question.

13 Q Did you discuss the
14 National -- do you need a break?

15 A No. Sorry.

16 Q Did you discuss the National
17 negotiations directly with oversight
18 board members?

19 A Yes.

20 Q Did you update the oversight
21 board members on proposals to and from
22 National?

23 A I think I said this before.
24 But just to be clear, no proposal was
25 made to National without board approval.

1 DAVID BROWNSTEIN

2 Q Did the oversight board
3 members -- strike that.

4 Did the oversight board
5 approve proposals to National by a vote?

6 A Yes.

7 Q At any point, did an
8 oversight board member vote against a
9 proposal to National?

10 MR. MERVIS: I think that
11 gets into deliberative process
12 privilege.

13 MR. MADDEN: I'm quite sure
14 it doesn't. It's already been the
15 subject of testimony in the case.
16 You can instruct the witness if you'd
17 like.

18 MR. MERVIS: Fair enough.
19 I'm going to instruct him for the
20 moment. I may withdraw my objection.

21 MR. MADDEN: Fair enough.
22 Understood. I just want to make
23 sure. Maybe we'll come back.

24 MR. MERVIS: Okay.

25 Q If you look at Exhibit 92.

1 DAVID BROWNSTEIN

2 A Which one is that?

3 Q That's, sorry, your tab 5.

4 MR. MERVIS: Actually, Matt,
5 you can go ahead and re-ask that
6 question, if you want to.

7 Q At any point, did an
8 oversight board member vote against a
9 proposal to National?

10 A I have no -- I have no way
11 of knowing. I'm sorry.

12 Q Were you at the meetings
13 when the oversight board --

14 A Absolutely.

15 Q Let me finish the question.
16 Were you in attendance at
17 the meetings when the oversight board
18 voted on proposals to National?

19 A Yes.

20 Q And you just don't recall
21 how the members of the oversight board
22 voted?

23 A No.

24 Q If you look at the
25 settlement allowance -- excuse me -- the

1 DAVID BROWNSTEIN

2 Before the break, we were
3 talking about the exchange ratio in the
4 National PSA; okay?

5 A Yes.

6 Q The 71.65 percent exchange
7 ratio, that was not the exchange ratio
8 that the oversight board offered to all
9 PREPA bondholders under the plan of
10 adjustment; correct?

11 A Correct.

12 MR. MERVIS: Wait.

13 A Under the plan of
14 adjustment.

15 MR. MERVIS: I know. Go
16 ahead. You could answer the
17 question.

18 Q The offer to all PREPA
19 bondholders under the plan of adjustment
20 was a 50 percent exchange ratio; correct?

21 A Correct.

22 Q Why did the oversight board
23 in the plan of adjustment not offer to
24 all PREPA bondholders the same
25 opportunity to settle their bond claims

1 DAVID BROWNSTEIN

2 question as well.

3 Q The oversight board has
4 disclosed that one of the subjects of
5 your testimony at the confirmation
6 hearing will be that the settlement the
7 oversight board achieved with National is
8 fair and reasonable; correct?

9 A Correct.

10 Q What is the basis on which
11 you plan to testify that the National
12 settlement is fair and reasonable when
13 all PREPA bondholders were offered only a
14 50 percent exchange ratio under the plan
15 of adjustment?

16 MS. SPILLANE: Objection to
17 form.

18 MR. MERVIS: Object to the
19 form of the question.

20 You want to hear it back?

21 THE WITNESS: No. I
22 understand his question.

23 A I just don't know how to not
24 say it's mediation privilege. So I can
25 walk it through with you.

1 DAVID BROWNSTEIN

2 MR. MERVIS: I have a
3 different problem with the question.
4 I think the witness feels like he
5 can't answer it as phrased because of
6 mediation privilege. I think that's
7 either the answer, or I can talk to
8 him outside about why he's saying
9 that. I think there is a fundamental
10 issue with the question.

11 MR. MADDEN: I want to get
12 the question right.

13 MR. MERVIS: I think asking
14 him why he thinks the settlement's
15 fair and reasonable, that's a
16 perfectly fair and appropriate
17 question. It's the last part of your
18 question where you said when blah,
19 blah, blah, blah; right? To me,
20 that's argumentative and is
21 actually -- it's a disconnect.

22 MR. MADDEN: I understand
23 the objection. I don't agree with
24 it. So I'm okay with the question.

25 Q So let me just ask it one

1 DAVID BROWNSTEIN

2 more time. If your answer is you can't
3 tell me the answer, then that will be
4 your testimony.

5 What is the basis on which
6 you believe the National settlement is
7 fair and reasonable, given that all PREPA
8 bondholders were offered only a
9 50 percent exchange ratio under the plan
10 of adjustment?

11 MS. SPILLANE: Objection to
12 form.

13 MR. MERVIS: Same objection.

14 A Based on your question, I
15 can't answer it due to mediation
16 privilege; okay? If you broke it into
17 pieces, there would be things I could
18 say.

19 MR. MADDEN: And given the
20 witness's response, counsel, do you
21 instruct him not to provide the
22 answer?

23 MR. MERVIS: No. I don't
24 know. I'd have to confer with him.
25 I hear what he's saying. I imagine

1 DAVID BROWNSTEIN

2 that I will agree with him as to his
3 reason. But I haven't heard what the
4 reason is yet.

5 MR. MADDEN: Let's take a
6 break.

7 THE VIDEOGRAPHER: The time
8 is 12:13 p.m. And we're going off
9 the record.

10 (A short recess was taken.)

11 THE VIDEOGRAPHER: The time
12 is 12:16 p.m. And we're back on the
13 record.

14 Q The pending question -- and
15 I'm just asking if your answer has
16 changed over the break -- is, what is the
17 basis on which you believe the National
18 settlement is fair and reasonable, given
19 that all PREPA bondholders were offered
20 only a 50 percent exchange ratio under
21 the plan of adjustment?

22 MR. MERVIS: So I still do
23 object to the form. And, again, I
24 have no issue with the first part of
25 the question. But based on the

1 DAVID BROWNSTEIN

2 conference that we had, I actually --
3 I think what he had in mind was
4 correct, and I will instruct him not
5 to answer that question.

6 Q Is it your understanding
7 that there are PREPA bondholders for whom
8 the only offer the settlement that has
9 been made to them is the one under the
10 plan of adjustment?

11 A Correct.

12 Q In fact, there are thousands
13 of such bondholders; correct?

14 A I don't know that.

15 Q There are many such
16 bondholders in number?

17 A I don't have that
18 information.

19 Q For the bondholders who are
20 not involved in mediation and for whom
21 the only offer of settlement they've ever
22 received from the oversight board is the
23 one in the plan of adjustment, how does
24 it make it fair and equitable to them
25 that National was offered and agreed to a

1 DAVID BROWNSTEIN

2 71.65 percent exchange ratio?

3 MS. SPILLANE: Objection to
4 form.

5 MR. MERVIS: I object to the
6 form of the question.

7 MR. MADDEN: Let me try it
8 again.

9 Q Given that there are
10 bondholders who have only received an
11 offer of settlement from the oversight
12 board, that's the one in the plan of
13 adjustment, which was a 50 percent
14 exchange ratio, how is the agreement with
15 National to a 71.65 percent exchange
16 ratio on its bond claim fair and
17 reasonable?

18 MS. SPILLANE: Objection to
19 the form.

20 MR. MERVIS: Objection to
21 the form.

22 A What I would tell you is
23 that there's a settlement with National
24 to deal with all the potential
25 litigation. And so the settlement pays

1 DAVID BROWNSTEIN

2 them more than it pays other creditors
3 who can vote for or against the plan.

4 Q Were all PREPA bondholders'
5 claims subject to that pending
6 litigation?

7 MR. MERVIS: I object to the
8 form.

9 A Well, I don't believe --
10 first of all, I don't believe that the
11 other creditors, other than the monoline
12 insurers and potential secondary market
13 purchasers of those bonds, have a
14 reimbursement claim.

15 Second, what National
16 accepted were two additional things.
17 One, that they would not receive a CVI
18 and, Two, that in the event there was
19 excess cash flow that would have gone to
20 settling bondholders through the flow of
21 funds in the plan, they will only receive
22 50 percent on the dollar of what is
23 available to them until the other
24 accepting bondholders get to the same
25 recovery that they have.

1 DAVID BROWNSTEIN

2 Q And I want to put aside for
3 the moment, the treatment of the settled
4 reimbursement claim that National has
5 under the PSA.

6 A Okay.

7 Q Just focusing on the
8 treatment under the PSA of National's
9 bond claim, were the two terms you just
10 described different than the ones that
11 were offered to all PREPA bondholders
12 under the plan of adjustment?

13 MR. MERVIS: You mean the --
14 well, okay. Objection to the form.
15 You mean the 50-cent?

16 Q You just described a number
17 of things National agreed to, an exchange
18 ratio.

19 A Yeah. I hear you.

20 Q The treatment of the CVI and
21 some other things.

22 Was that package of terms
23 the one that was offered to all PREPA
24 bondholders under the plan of adjustment?

25 MR. MERVIS: That's a

1 DAVID BROWNSTEIN

2 different question. That one, I
3 object to the form.

4 A I'm not in a position to
5 answer that.

6 Q You don't know whether
7 that's the offer of settlement that was
8 made pursuant to the plan of adjustment?

9 A No. I am not prepared to
10 answer that, given mediation.

11 MR. MERVIS: I agree with
12 it, at least the way it's phrased.

13 MR. MADDEN: Maybe I'm
14 misspeaking. I don't think my
15 question comes anywhere close to
16 mediation privilege.

17 Q My question is just whether
18 the package of terms that you agreed to
19 with National on its bond claim, is that
20 the same or different from the offer of
21 settlement that was made to all PREPA
22 bondholders under the terms of the plan
23 of adjustment?

24 A Right. And what I'm saying
25 to you is, in my view, that answer to

1 DAVID BROWNSTEIN

2 achieved greater than a 71.65 percent
3 recovery on its bond claim had it not
4 settled with the oversight board?

5 MS. SPILLANE: Objection to
6 the form.

7 MR. MERVIS: Object to the
8 form.

9 A I'm sorry. I need you to
10 ask the question again.

11 Q Sure.

12 Had National not entered
13 into a PSA with the oversight board under
14 the terms of the initial plan of
15 adjustment filed in December, would
16 National have stood to recover more than
17 71.65 percent on its bond claim?

18 MS. SPILLANE: Objection to
19 form.

20 MR. MERVIS: Objection to
21 the form.

22 A I think I understand. But
23 can you say it one more time?

24 Q Sure.

25 Had National not entered

1 DAVID BROWNSTEIN

2 into a PSA with the oversight board, then
3 in that scenario, under the terms of the
4 initial plan of adjustment filed in
5 December, would National have stood to
6 recover more than 71.65 percent on its
7 bond claim under any scenario covered by
8 the plan?

9 MS. SPILLANE: Same
10 objection.

11 A No.

12 Q What is the nature of
13 National's settled reimbursement claim?

14 A National has a separate
15 contract with PREPA under which they are
16 entitled to reimbursement for payments
17 made to bondholders that is separate from
18 the bond claim itself. That's why it's
19 called the reimbursement claim.

20 And while clearly, we're
21 settling on that at 20 cents on the
22 dollar which means there's both risk for
23 us and risk for them as to whether
24 they're entitled to that claim.

25 Q And the payments that

1 DAVID BROWNSTEIN

2 National has made to bondholders and for
3 which it seeks reimbursement, does that
4 comprise principal and interest on the
5 insured bonds?

6 A I'm sorry. You need to
7 break that up.

8 Q Okay.

9 Do the sums for which
10 National seeks reimbursement from PREPA
11 include principal it's paid to its
12 insured on account of PREPA bonds?

13 A No. The reimbursement claim
14 is strictly post-petition interest
15 claims.

16 Q Understood. I'm trying to
17 skip ahead.

18 There's a clause in here
19 that begins, "Provided however" under
20 reimbursement claim. This is on page 35
21 of the National PSA. Do you see that?

22 A I see, "Provided further."
23 Is it above that or below that?

24 Q It's above that. There's
25 another underlined, "Provided, however."

1 DAVID BROWNSTEIN

2 Q And you're also going to
3 testify as to the terms of the
4 settlements?

5 A Yes.

6 Q And that's just going to be
7 the terms that we've seen in these
8 documents before the PSAs?

9 MR. MERVIS: Objection to
10 the form.

11 A Well, it'll be on those, the
12 bond documents, which will be released
13 hopefully tomorrow morning, by tomorrow
14 and other documents that were part of the
15 overall settlements.

16 Q And you're also going to
17 discuss the benefits that they provide to
18 PREPA?

19 A Correct.

20 Q Let's just focus as to the
21 fuel line lenders' PSA. At those
22 settlements, I -- I took away from your
23 testimony that it was putting an end to
24 the litigation, was the first benefit. I
25 also heard that the second benefit was it

1 DAVID BROWNSTEIN

2 was able -- it allowed you to define the
3 universe of payments so you would know
4 what else was available to settle with
5 other parties; is that fair?

6 MR. MERVIS: I object to the
7 form.

8 A Yes. That's fair.

9 Q Thank you.

10 Is there a third point that
11 you would describe as a benefit to the
12 settlement with the fuel line lenders?

13 A Well, I did describe that
14 the fuel lines are a sophisticated
15 institutional investor who has a lot of
16 experience with municipal bonds. And
17 they, as well as National, who is also a
18 sophisticated investor with significant
19 experience in municipal bonds, both had
20 to conclude in order to sign on that the
21 bonds we were offering them would meet
22 the criteria that they would need, so
23 that they who aren't long-term investors
24 in municipal bonds would be able to sell
25 them at -- into the market at a value

1 DAVID BROWNSTEIN

2 that made economic sense for them.

3 Q And that's a benefit to
4 PREPA?

5 A That's a benefit to our --
6 to the entire means to get out of
7 bankruptcy.

8 Q And these benefits, those
9 three benefits would also be benefits
10 for -- to PREPA from the National PSA?

11 A Yes. Sorry. I was talking
12 about both. No. National's case, not
13 with respect to the issue of getting to a
14 known recovery with them obviously.

15 Q Now, in the same paragraph,
16 it says, "Mr. Brownstein will base this
17 testimony on his personal participation
18 in the negotiation of the National PSA
19 and fuel line lender PSA."

20 My question is, was that
21 negotiation as to either one of those
22 PSAs outside of the mediation context?

23 A No.

24 Q So is it your belief that
25 your personal participation in the

1 DAVID BROWNSTEIN

2 benefits for the fuel line lenders'
3 settlement, as well as the National
4 settlement.

5 Here, you indicate on the
6 following paragraph that Mr. Brownstein
7 is expected to testify regarding the key
8 benefit that the oversight board took
9 into account.

10 Are those the same as the
11 three items that we discussed previously
12 with respect to the PSAs or are they
13 different?

14 A Those are the basic ones,
15 you know, I need to think about what
16 other ones we were talking about
17 previously and see whether they're
18 valuable enough to include or not. But
19 those are the three basic ones.

20 Q And that would include --
21 reading on, that would include the
22 benefits that the oversight board took
23 into account with respect to its
24 resolution of the litigation filed by the
25 fuel line lenders, regarding the

1 DAVID BROWNSTEIN

2 priority; right?

3 A Correct.

4 Q And what do you anticipate
5 your testimony to be with respect to
6 those key benefits regarding the priority
7 of the fuel line lenders?

8 MR. MERVIS: Object to the
9 form. But you could answer.

10 A Again, as I said previously
11 today, the critical pieces, what we were
12 concerned about is since we have a
13 limited amount of funds available for
14 creditors, without knowing what the
15 amount is that we will be paying the fuel
16 lines, given we would be going into
17 litigation, we would either have to
18 reserve a significant amount of money for
19 the fuel lines until we knew, or we could
20 settle with them and, therefore, be able
21 to negotiate with the bondholders with
22 knowing what was the free cash flow
23 available for them.

24 Q Thank you.

25 Moving away from the

1 DAVID BROWNSTEIN

2 disclosure statement and moving towards
3 the fuel line lender settlement, under
4 that settlement, why are bondholders
5 entitled to interest accrual from
6 December 1, 2022 on the Series A Bonds?

7 MR. MERVIS: I object to the
8 form.

9 A Well, you're asking why the
10 fuel line lenders as owners of the Series
11 A Bonds are entitled to one year's
12 accrued interest.

13 Q Yes.

14 A Okay. And this is on the
15 new bonds so you understand; right? That
16 there's a deemed issuance date on the
17 bonds, built into our cash flows already
18 is the cost of that one year's accrual.
19 If the settlement takes longer than a
20 year, they no longer receive additional
21 accrual.

22 So the charge that you're
23 aware of that we're prepared to pay to
24 all creditors incorporates already, the
25 interest accrual from the deemed issuance

1 DAVID BROWNSTEIN

2 date. The reason for the deemed issuance
3 date is, as I think you know, the fuel
4 lines are one of several creditors, but
5 one who has settled with the board who
6 have entered into several RSAs with us;
7 okay? And those RSAs have been
8 terminated for various reasons. The
9 issue is in getting creditors to agree
10 today to move forward with an RSA with
11 us. They're looking to understand what
12 can keep the deal from closing and when
13 it can close and what the economic impact
14 to them of it not closing on that
15 schedule is.

16 So as part of the settlement
17 with National -- with the fuel line
18 lenders, we've agreed to give them a
19 deemed issuance date. And if the bonds
20 are issued in less than one year or one
21 year exactly, they will get accrued
22 interest on those bonds, on the new
23 bonds. If it's longer than one year, the
24 accrual stops. It's not dissimilar,
25 although it is different, from the

1 DAVID BROWNSTEIN

2 National agreement where National will
3 receive one cent on its pro rata share of
4 their bonds.

5 So let me try and help you
6 think about this. If there are 8 billion
7 of outstanding bonds, one cent on that
8 8 billion then divided by all the bonds,
9 multiplied by National's bonds is what
10 they'd be entitled to for up to 12
11 months, subject to approval of the
12 utility commission, PREB.

13 Q So you view this as interest
14 on new bonds and not post-petition
15 interest; is that fair?

16 A No. The difference, as I
17 said, is that the interest on -- for
18 National is one cent. It's not equal to
19 interest on the bonds, on the old bonds.

20 Q I'm still on the fuel line
21 lenders.

22 A I'm sorry. I apologize.
23 Yes. It's interest on the new bonds.

24 Q Now, staying with the fuel
25 line lenders, I mean you're not going to

1 DAVID BROWNSTEIN

2 for the difference in the treatment,
3 other than the fact that one is a
4 settlement, and one hasn't been settled?

5 MR. MERVIS: Objection to
6 the form.

7 A Yes. Again, it was our
8 position that we have risk with the fuel
9 line lenders on priority. And we don't
10 believe we have that risk with you.

11 Q And that has to do with the
12 current expense?

13 A Yes.

14 Q Do you know if there's any
15 general unsecured creditors that have
16 current expense claims?

17 A No, we don't. We believe
18 there may be. But we don't.

19 Q Have you ever heard of a
20 company called General Unsecured Creditor
21 as I believe Cedarlake Capital?

22 A No.

23 Q If there was a general
24 unsecured creditor that also had a
25 current expense claim, would they be

1 DAVID BROWNSTEIN

2 treated similarly in your opinion to the
3 fuel line lenders?

4 MR. MERVIS: Objection to
5 the form.

6 A The answer is no. We don't
7 have a settlement with them. They didn't
8 negotiate a settlement. And the answer
9 would be it depends on if they settle and
10 how that settlement works. As you know,
11 there have been offers made.

12 Q Now, is it your
13 understanding that the fuel line lenders
14 are expressly named in the trust
15 agreement?

16 MS. SPILLANE: Objection to
17 form.

18 A I believe what's named is
19 fuel purchases; right?

20 Q Do you think that the trust
21 agreement references to the fuel line
22 lenders whether they're denominated by
23 some other name?

24 MS. SPILLANE: Objection to
25 form.

1 DAVID BROWNSTEIN

2 Q Let me talk briefly about
3 National and that PSA.

4 Is it your understanding
5 that National has a contractual priority
6 over unsecured creditors under the trust
7 agreement or any other document?

8 A At the time we settled with
9 National, there had been no ruling from
10 Judge Swain as to whether they had a
11 secured lien or not. At that time, we
12 settled the claim with them as we were
13 prepared to do with others at the same
14 time. And that included, you know,
15 settling the fact that they may have a
16 secured lien.

17 Q Does that PSA with National
18 have a fiduciary out?

19 MR. MERVIS: Objection to
20 the form. You could answer.

21 A I don't believe so. It has
22 outs in it. But I don't believe it has a
23 fiduciary out.

24 Q Do you know why it doesn't?

25 MR. MERVIS: Objection to

1 DAVID BROWNSTEIN

2 the form.

3 A Not every PSA has a
4 fiduciary out. That simple. There's
5 reasons to put one in. We have outs.
6 They have outs here. It's not a
7 fiduciary out. If Judge Swain says that,
8 as you know, the reimbursement claim is
9 not a valid claim, they still have to
10 proceed. They don't have an out. We
11 don't have an out for that. And if she
12 says that they are not -- well, there's
13 several outs and other provisions. But
14 there isn't -- my recollection is there
15 isn't a fiduciary out in that agreement.

16 Q Well, you just referenced
17 that Judge Swain, if she doesn't approve
18 the reimbursement claim, but that's just
19 one element of several elements of that
20 PSA, isn't it?

21 A Yes, although they don't
22 get -- remember the reason that they gave
23 up their CVI was in part because they
24 were getting the reimbursement claim.
25 That doesn't step back in. That deal, as